

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ZHONGLE CHEN,  
*on his own behalf and on behalf of others  
similarly situated,*

Plaintiff,

v.

KICHO CORPORATION d/b/a Kicho  
Japanese Fusion, et al.,

Defendants.

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**ORDER**

18-CV-07413 (PMH)

PHILIP M. HALPERN, United States District Judge:

On December 30, 2020, the Court denied without prejudice Plaintiff’s motion for default judgment against Defendants Kicho Corporation (“Kicho Corp.”) doing business as Kicho Japanese Fusion, Lian Hua Corp. (“Lian Corp.”) doing business as Kicho Japanese Fusion (together, the “Corporate Defendants”) on the grounds that Jin Chun Chen (“the Individual Defendant”) was actively litigating this case and as a general rule, default judgment should not be entered against one of several defendants alleged to be jointly liable until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted. (*See* Doc. 135 at 2). The Individual Defendant failed three times to appear for conferences before Magistrate Judge Krause, who then authorized Plaintiff to seek default judgment against the Individual Defendant. On September 30, 2021, the Court received notice that the Individual Defendant filed for bankruptcy and enforced the automatic stay of this action under 11 U.S.C. § 362. (Doc. 141). On February 1, 2022, Plaintiff advised that the bankruptcy court lifted the automatic stay, and requested to move for a default judgment against the Individual Defendant in this case. (Doc. 142).

On March 25, 2022, a Clerk's Certificate of Default was entered against the Individual Defendant. (Doc. 147). On April 4, 2022, Plaintiff filed a proposed Order to Show Cause, attorney affidavit in support with exhibits, statement of damages with exhibits, and a proposed default judgment. (Doc. 148-151). Plaintiff also file a motion for attorneys' fees, supported by attorney affirmation and a memorandum of law. (Doc. 152-154).

The Court declines to sign the proposed Order to Show Cause, and DENIES without prejudice Plaintiff's motion for attorneys' fees (Doc. 152). As an initial matter, the revised motion must be in strict compliance with the Court's Individual Practices (rev. Nov. 18, 2021) Attachment A, Default Judgment Procedure, including the memorandum of law required under paragraph 3(d). Any request for attorneys' fees shall be made as part of the application for a default judgment and not as a separate motion.

In addition to the foregoing, Plaintiff's revised motion may also seek default judgment against the Corporate Defendants, as well as the Individual Defendant.

The Clerk of Court is respectfully directed to terminate the pending motion (Doc. 152).

**SO ORDERED:**

Dated: White Plains, New York  
April 6, 2022



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Philip M. Halpern  
United States District Judge